

Effective February 2, 2012: Disclosure of Records Scheduled for Discussion at Open Meetings

Members of the public have on many occasions complained that they cannot fully understand discussions among members of public bodies, even though the discussions occur in public. For example, a board member might refer to the second paragraph of page 3 of a record without disclosing its content prior to the meeting. Although the public has the right to be present, the ability to understand or contribute to the decision-making process may be minimal and frustrating.

Effective February 2, 2012, a new section 103(e) is added to the Open Meetings Law. The purpose of the legislation is simple: those interested in the work of public bodies should have the ability, within reasonable limitations, to see the records scheduled to be discussed during open meetings prior to the meetings. The language of the amendment appears in the text of the [Open Meetings Law](#).

The amendment addresses two types of records: first, those that are required to be made available pursuant to FOIL; and second, proposed resolutions, law, rules, regulations, policies or amendments thereto. When either is scheduled to be discussed during an open meeting, the law requires that they be made available to the public, to the extent practicable, either prior to or at the meeting.

To comply with the new provisions, copies of records must be made available to the public prior to or at the meeting for a reasonable fee, or by posting them online prior to the meeting. The amendment authorizes an agency to determine when and what may be "practicable" in making records available.

It is important to stress that the amendment involves an effort to take advantage of today's information technology to promote transparency and citizens' participation in government, and to reduce waste. If the agency in which a public body functions (i.e., a state department, a county, city, town, village or school district) "maintains a regularly and routinely updated website and utilizes a high speed internet connection," the records described above that are scheduled to be discussed in public "shall be posted on the website to the extent practicable as determined by the agency..."

Posting records online can reduce an agency's costs associated with requests made under FOIL. Staff does not have spend time retrieving paper records, photocopying the records, or carrying out the administrative tasks involved with charging fees for copies.

The phrase quoted twice in section 103(e), "to the extent practicable as determined by the agency", is intended to ensure that the amendment is implemented reasonably and without undue burden or cost to an agency. Many units of government are small and lack information technology resources or the knowledge or expertise to implement the new provision. If that is so, and they do not have the ability to give effect to the amendment with reasonable effort, they are not required to do so. In recognition of fiscal realities, the new provision specifies that an agency "may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision."

In the "News" section of this website, there is a link to a report prepared for the Committee on Open Government that may be especially useful to governmental entities that have neither the resources nor the expertise to give effect to the amendment. Entitled ["Evaluating the Importance of Technology and the Role of Information](#)

[Providers within Local Governments in New York](#)”, the report offers guidance that may enable those entities to gain the knowledge and resources needed to do so at minimal cost.

It is emphasized that the potential obligation to make records available on request or online is limited to records that are “scheduled to be the subject of a discussion” during an open meeting. If there is a basis for conducting an executive session, a portion of a meeting that may be closed, records scheduled to be discussed during the executive session would not be required to be disclosed. Further, if, for example, a proposed policy offered by the head of an agency, a mayor, a town supervisor or a superintendent of schools was preceded by recommendations or opinions expressed by staff or members of a public body, those recommendations, opinions or similar materials fall outside the coverage of the amendment and (may but) need not be disclosed [see FOIL, section 87(2)(g)].

Through the disclosure of records scheduled to be discussed during open meetings, the public can gain the ability to better understand and appreciate the issues faced by government. Interested and civic-minded citizens can offer information and points of view that can assist in improving the operation of government to the benefit of our communities.

OPEN MEETINGS LAW

[Section 100. Legislative declaration.](#)

[Section 101. Short title.](#)

[Section 102. Definitions.](#)

[Section 103. Open meetings and executive sessions.](#)

[Section 104. Public notice.](#)

[Section 105. Conduct of executive sessions.](#)

[Section 106. Minutes.](#)

[Section 107. Enforcement.](#)

[Section 108. Exemptions.](#)

[Section 109. Committee on open government.](#)

[Section 110. Construction with other laws.](#)

[Section 111. Severability.](#)

§100. Legislative declaration.

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

§101. Short title. This article shall be known and may be cited as "Open Meetings Law".

§102. Definitions. As used in this article:

1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.
2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.
3. "Executive session" means that portion of a meeting not open to the general public.

§103. Open meetings and executive sessions.

- (a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.
- (b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.
- (c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates.
- (d) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings. 1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or

otherwise recorded and/or transmitted by audio or video means. As used herein the term "broadcast" shall also include the transmission of signals by cable.

2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.

*** (e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision. ***
Effective February 2, 2012.

§104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

5. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body's internet website.

§105. Conduct of executive sessions.

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and

- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.
2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

§106. Minutes.

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

§107. Enforcement.

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article. If the court determines that a public body has violated this article, the court may require the members of the public body to participate in a training session concerning the obligations imposed by this article conducted by the staff of the committee on open government. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.
2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held.
3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

§108. Exemptions. Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;
2. a. deliberations of political committees, conferences and caucuses.
b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to
(i) the subject matter under discussion, including discussions of public business,
(ii) the majority or minority status of such political committees, conferences and caucuses or

(iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and

3. any matter made confidential by federal or state law.

§109. Committee on open government. The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

§110. Construction with other laws.

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article

§111. Severability. If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.